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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

ORGANIZED VILLAGE OF KAKE, <i>et al.</i> ,)	Case No. 1:20-cv-00011-SLG
)	
Plaintiffs,)	
)	
v.)	JOINT STATUS REPORT AND
)	FEDERAL DEFENDANTS'
)	MOTION TO EXTEND STAY
THOMAS VILSACK, in his official capacity)	UNTIL NOVEMBER 1, 2021
as Secretary of Agriculture, UNITED)	
STATES DEPARTMENT OF)	
AGRICULTURE; and UNITED STATES)	
FOREST SERVICE)	
)	
Federal Defendants.)	
)	
)	
)	
)	

On June 25, 2021, Federal Defendants moved for an extension of the original 120-day stay (ECF No. 17) until September 1, 2021, during the Department of Agriculture's review of the Alaska Roadless Rule that Plaintiffs challenge in this case. ECF No. 29. The Court granted Federal Defendants' motion on June 30, 2021, staying this case until September 1, and ordered the parties to file reports, jointly if possible, regarding future proceedings in this case, including, as appropriate, whether the stay should be further extended or proposed dates by which a dismissal or remand motion are to be filed. ECF No. 30. The parties provide their respective positions to the Court:

Federal Defendants:

Federal Defendants wish to provide the Court with an update on the status of the agency's review of Alaska Roadless Rule and request that the Court extend the stay until November 1, 2021.

On January 20, 2021, the White House issued a "Fact Sheet" identifying agency actions for review in accordance with Executive Order 13990 that included the "Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska, 85 Fed. Reg. 68688 (Oct. 29, 2020), *i.e.*, the "Alaska Roadless Rule," challenged in this case. The U.S. Department of Agriculture ("USDA") has reviewed the Alaska Roadless Rule and proposes to repeal or replace subpart E of 36 CFR § 294 exempting the Tongass National Forest from the 2001 Roadless Rule. In the Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions published on June 11, the agency set forth a timetable for publication of a notice of proposed rulemaking of August 2021.

On August 27, 2021, USDA submitted a proposed rule to the Office of Information and Regulatory Affairs (“OIRA”) through its online system. Once accepted, OIRA will conduct an informal review and may approve the rulemaking for publication or initiate a formal inter-agency review. Accordingly, Federal Defendants respectfully request an extension of the stay until November 1, 2021, to allow time for OIRA’s review and for the parties to discuss future proceedings in this case informed by the content of the proposed rule.

This Court has broad discretion to stay proceedings and defer judicial review and should do so here. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). A continuation of the stay until a proposed rule is published is appropriate here, because it is likely to prevent the parties and the Court from undertaking work, such as the compilation of an administrative record, which would soon prove unnecessary. A further extension of the stay will not prejudice the Court or the parties. The Forest Service does not anticipate that it will authorize any projects or activities in reliance on the Alaska Roadless Rule prior to November 1, 2021. In the event it does, the government has already agreed to provide the parties and the Court with 30 days’ advance notice and will continue to do so during the extended stay. *See* ECF No. 13.

Federal Defendants propose that by November 1, 2021, or within seven days of the publication of the notice of proposed rulemaking –whichever is earlier—the parties

submit status reports regarding future proceedings in this case, including, as appropriate, whether the stay should be extended or proposed dates by which a dismissal or remand motion are to be filed.

Plaintiffs do not oppose Federal Defendants' request to extend the stay.

Defendant Intervenors:

The Defendant Intervenors do not object to the requested stay but disagree with the proposed actions and inactions of the Federal Defendants. The Federal Defendants' statement that they do not anticipate authorizing any projects is tantamount to pre-emptive denial or delay of projects. The Alaska Roadless Rule has been in place since October 2020. Therefore, the Tongass is open for road access for mining and renewable energy as a matter of law. The Tongass contains locatable and leasable minerals, including critical rare earth minerals, valued at billions of dollars. The delays and uncertainty due to the stay in this litigation and the potential rulemaking have a chilling effect on planning and development for timber, mining, and renewable energy projects. The Alaska Roadless Rule sought to alleviate the restrictive prohibitions and uncertainty of the underlying Roadless Rule. The Federal Defendants' anticipatory denials of projects and delays effectively grant the Plaintiffs the injunction that they seek to hold up development in an area the size of West Virginia. Due to these chilling impacts and associated negative socio-economic consequences, the Defendant Intervenors disagree with the characterization that the stay is without prejudice to the parties. The Defendant Intervenors request this is the last stay granted.

Respectfully submitted on this 1st day of September, 2021.

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